

**APPEAL TO CALVIN JOYNER, THE REGIONAL FORESTER USDA FOREST SERVICE REGION III, FROM A DECISION OF THE FOREST SUPERVISOR, GILA NATIONAL FOREST**

APPELLANT

V.

RESPONDENT

Notice of Appeal, Statement of  
Reasons and Request for Relief on  
Record of Decision for Travel  
Management -  
Gila National Forest

NOTICE OF APPEAL  
STATEMENT OF REASONS  
RELIEF REQUESTED

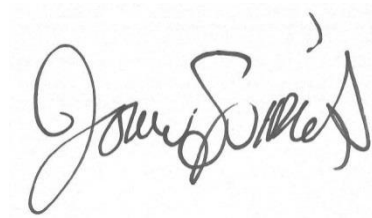
Joanne Spivack

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## NOTICE OF APPEAL

Pursuant to 36 C.F.R. Part 215, the Appellant appeals Gila National Forest, Forest Supervisor Kelly M. Russell's Record of Decision for Travel Management (ROD), signed September 9, 2013 and published in the Silver City Daily Press on June 11, 2014. The ROD violates the National Environmental Policy Act (NEPA), the regulations promulgated by the Council on Environmental Quality (CEQ), and Forest Service Planning regulations. Consequently, the Appellant requests that the ROD be withdrawn and a new decision issued to correct the deficiencies identified herein.

A handwritten signature in black ink, appearing to read "Joanne Spivack", is shown above a faint rectangular stamp.

Joanne Spivack

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Reference: **Record of Decision for Travel Management on the Gila National Forest**

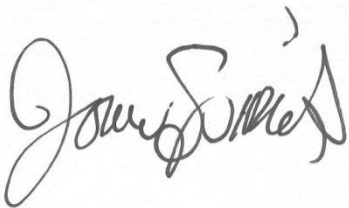
Enclosed is an appeal filed by Joanne Spivack. I submit that my comment on the Travel Management Environmental Impact Statement (EIS) for the Gila National Forest were not adequately addressed. My primary concern is that the land be managed appropriately for continued motorized public access and that the purposes of the NEPA are fulfilled. I have actively participated and provided input and comments on the Travel Management project process.

My interest in this Decision flows from my personal use of the Gila National Forest for recreation with motorcycles and four wheel drive vehicles, my concern for proper management of the Gila National Forest and my belief that the USDA Forest Service, must make its land-use management decisions lawfully, in accordance with laws and regulations.

## Appeal of the Record of Decision for Travel Management on the Gila National Forest

My name is given code number 03032011-17 on page 816, FEIS, Appendix C. This comment was submitted as one of the comments I submitted for the New Mexico Off Highway Vehicle Alliance. The comment was submitted again under my personal name so I would have standing on the comment and the issue.

Respectfully,

A handwritten signature in black ink, appearing to read "Joanne Spivack". The signature is fluid and cursive, with the first name "Joanne" written in a larger, more prominent script than the last name "Spivack".

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### **Statement of Reasons**

Certain aspects of the ROD for Travel Management on the Gila National Forest are based on flawed or inadequate information. The agency misrepresented salient facts in the EIS's analysis and conclusions and the resulting ROD put the agency in violation of NEPA and CEQ regulations. In particular, I submit the Record of Decision as done under the Travel Management is not a legitimate decision because the Travel Management Rule is an illegal categorical exclusion, that the Record of Decision violates other laws, such as E.O. 12866, which describes a \$100 million limit on economic impact, and other aspect of the NEPA regulations. I, as part of the reviewing public, respectfully identified these material mistakes and process errors in our comments on the Draft EIS. The agency failed to respond to my comment on the Draft EIS, failed to remedy these errors in the Final EIS and failed to adequately address my comments in the Final EIS response to comments.

### **RELIEF REQUESTED**

As shown in the Statement of Reasons, the ROD for Travel Management on the Gila National Forest presents a decision based on an EIS that contains certain deficiencies and arrives at inaccurate conclusions based on a document and project record containing those deficiencies. The resulting ROD violates the NEPA, the regulations promulgated by the CEQ, and Forest Service Planning regulations. NMOHVA hereby requests the agency withdraw the ROD, correct the deficiencies in the EIS, reconsider the corrected EIS, and that a new decision be issued to correct the deficiencies identified herein.

## **INADEQUATE AGENCY RESPONSE TO COMMENT**

### **Appeal Point 1: Response Ignores Comment; “responds” to two invented issues**

My original comment presented one, and only one, very clearly stated issue; that the Travel Management Rule is an illegal Categorical Exclusion. The FEIS Appendix B response completely misrepresents my comment, summarizing it as two unrelated issues; that the Travel Management Rule is unconstitutional, and that it is illegal to close roads. Neither of those issues are in the comment. The response does not address the substantive issue raised in my comment, and therefore fails to provide the CEQ required response.

The response is numbered as 03032011-17-7 and appears on p.601 of Appendix B, Responses to Comments. Appendix B incorrectly summarizes the comment as this:

Summary Statement: The Forest Service should not close open roads because it is illegal and the rule is not constitutional.

The response discussion is about the agency’s rule-making authority. From the response:

Response: It is not illegal or a misuse of regulations for the Forest Service to close roads nor is the Travel Management Rule not constitutional

The first page of my original comment provides a concise statement of the error:

**Error:** The Travel Management Rule (TMR) is in violation of CEQ because it does not qualify to be a Categorical Exclusion. By calling the TMR a Categorical Exclusion, the U.S. Forest Service allowed itself to avoid a nation-wide Environmental Impact Statement for the Rule. This allowed them to impose a Rule which imposes major changes and reversals in long established planning procedures, and do to so without the participation of the public and local governments.

The comment then proceeds to describe the requirements of a categorical exclusion and exactly how the travel management rule fails to qualify as a categorical exclusion. The Response ignores the argument in the comment, therefore I refer the appeals reviewing officer to my original comment (attached), for the details of my argument.

**Appeal Point 2: Decision Elements are imposed by the Rule, regardless of whether such elements are needed locally**

The Travel Management Rule claims it is of no effect until implemented. That is not true. The Rule imposed specific elements in the travel management decision. These are elements that might not otherwise have been included in a travel decision.

Under the Rule, the Gila National Forest was required to eliminate cross-country travel, on the entire 2.44 million acre planning area, and to designate routes. The national level Rule requires that this be done, regardless of whether such closure and designation is needed or appropriate. The Rule states that decisions should depend on local conditions, at p. 68268:

The Department believes that the scope, content, and documentation of NEPA analysis associated with designating routes and areas for motor vehicle use will ultimately depend on site-specific factors, including the local history of travel planning, public input, and environmental impacts at the local level.

Regardless of the verbiage embracing local decision making appropriate for local conditions, the effect of the Rule is just the opposite. The Rule:

- 1) Specifically prevented the decision-maker from considering a decision that might best suit the forest, based on the analysis presented in the FEIS.
- 2) Prohibits considering the full range of reasonable alternatives.
- 3) Forces the decision to include certain elements in the decision, regardless of whether or not those elements are appropriate for the local forest.

The Rule requires that certain elements be in the decision, even if those elements conflict with, or are contrary to, local site-specific conditions and contrary to the analysis. This is exactly what happened in the Gila National Forest, as shown at many places in the FEIS. Statements throughout the FEIS indicate the restrictions were not needed. For example, FEIS page 375 states that under all alternatives, the there are no significant forest-wide negative cumulative effects for all species: (bold added)

**Cumulative Affects Assessment and Findings**

Across the Gila National Forest, the incremental impacts of the proposed project and its associated alternatives, when added to other past, present, and reasonably foreseeable future actions, are at levels that do not cause significant affects to wildlife species or their habitat on the forest. **More specifically, the incremental impacts of the action alternatives of travel management when**



**added to other past, present, and reasonably foreseeable actions of land ownership, mining, grazing, vegetation management projects, and recreation activities are at levels that do not cause significant affects to species of concern identified in this analysis.** This analysis shows that if the effects of all open roads are considered (private, county, State, and Federal), there are localized areas of concern for species like ungulates, wide ranging carnivores, and the Chiricahua leopard frog.

The FEIS concludes that the wildlife is essentially healthy and doing fine, with the cumulative effects of decades of totally unrestricted motorized use. If the wildlife is healthy, their habitats are in good condition. This indicates that decades of unrestricted motorized use has not had significantly harmed the land. In sum, the cumulative affects analysis shows there is no need to reduce the existing motorized use. However the Rule forces the Gila National Forest to impose unnecessary restrictions which harm the human environment.

### **Appeal 3: The Rule falsely asserts that decision-making is local to the Gila National Forest.**

The USFS maintains that our national forests are being managed properly and appropriately. If that is the case, the national level of the USFS should have left the Gila National Forest alone, and not interfered with local management by imposing the Rule. The Rule makes the following statements about local decision making. Federal Register, Vol. 70, No. 216 /Wednesday, November 9, 2005 /Rules and Regulations page 68265 (bold added):

**Revised regulations are needed to provide national consistency and clarity on motor vehicle use within the NFS.** At the same time, the Department believes that designations of roads, trails, and areas for motor vehicle use should be made locally. **The final rule provides a national framework under which designations are made at the local level.**

The Rule fails to show what consistency means. It does not say what sort of national consistency did not exist, and what consistency is needed now and why. The travel policies in different national forests did not have this alleged “consistency” before the Rule was issued. Each forest was managed according to its local conditions and needs. The statement about consistency is contradictory to the statements about local control. If decisions were really allowed to be made locally, there would not necessarily be any consistency, and indeed, there should NOT be consistency. The Osceola National

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Forest in Florida is entirely different from the Gila National Forest. It would be irrational to claim that one land management prescription is appropriate for all areas of both.

The Rule at p. 68266 reiterates the ephemeral idea of local choice and evaluation (bold added):

It is entirely appropriate for different areas of the National Forests to provide different opportunities for recreation. **The Department believes such choices and evaluations are best made at the local level**, with full involvement of Federal, tribal, State, and local governments, motorized and nonmotorized users, and other interested parties, as provided for in this final rule.

This contradiction is captured at p. 68267 of the Rule, where it states:

**The final rule requires local agency officials**, working with the public, to designate which roads, trails, and areas are available for motor vehicle use. **The final rule prohibits use off the designated system.**

The Rule states local officials can make the decisions. But that is not true either. The local officials are prohibited from allowing cross-country travel. They must designate routes, they must publish a motor vehicle use map.

### **Appeal Point 4: The Gila National Forest FEIS was restricted by the Rule, states the effect of complying with the Rule is inevitably a reduction**

The Rule severely limits the local decision; it must reduce use. FEIS, Summary p. iii: (bold added)

**To comply with the Travel Management Rule**, the Gila National Forest (the forest) proposes to provide for a system of roads, trails, and areas designated for motorized use by making changes to the current travel system. **The proposed changes will reduce the places where people can drive in the Gila National Forest.**

### **Appeal Point 5: The Rule Forces the Gila National Forest to violate NEPA**

To consider a full range of reasonable alternatives, the EIS could have maintained the current level of motorized use. The cumulative effects analysis shows current forest conditions do not justify reducing motorized use. But the Rule eliminates the reasonable option of preserving the status quo. The Rule forces the Gila National Forest to make a

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decision on an EIS whose range of alternatives is contrary to the conclusions of the analysis itself: it forces closure although the analysis concludes there is no significant forest-wide damage from decades of unrestricted motorized use. Contrary to CEQ, there is no rational cause-and-effect between the alternatives, the analysis and the decision. The Rule has forced the Gila National Forest to make a decision that is inherently not compliant with NEPA. No rational decision was possible under the FEIS, because the closures proposed by the alternatives are not supported by the analysis.

### **Appeal Point 6: The Rule falsely claims it is only a procedural framework, not having any effect in the Gila National Forest until a decision is made**

At Federal Register p. 68267, the Rule states it is only establishing a procedural framework, and it has no effect until decisions are made:

The final rule establishes **a procedural framework for local decisionmaking and will not have any effect until designation of roads, trails, and areas is complete** for a particular administrative unit or Ranger District, with opportunity for public involvement and coordination with Federal, State, local, and tribal governments.

Despite the claims that the Rule is only a framework, it has forced local forests to amend their forest plans made as NEPA decisions. They are made with site-specific analysis, and result in decisions appropriate for the local forest. But the Rule is forcing forests to make fundamental changes in these locally decided plans, which reverse prior local decisions. It is important to note that the local forests saw no need to change their forest plans until the Travel Management Rule forced them to. The Rule has imposed elements that are contradictory to prior NEPA decisions.

The Rule reverses the Gila National Forest existing forest plan policy. The Rule forces the Gila National Forest to ban cross country travel and to create a designated motorized use system, something which did not exist in the Gila National Forest's forest plan. These statements in the FEIS indicate the impact that the Rule has had, by forcing amendments of the Gila National Forest forest plan. (bold added)

This is shown at FEIS, p.12:

**The Decision Will Change Where People Can Drive in the Forest**  
**Currently, the Gila National Forest is open to motorized use** unless marked "restricted to motor vehicle use." **The Travel Management Rule reverses that procedure:** the forest will be closed to cross-country motorized use except

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where specifically designated for motor vehicle use and displayed on the motor vehicle use map.

At FEIS, Summary p. I,

The Gila National Forest (the forest) proposes to make changes to the current system of National Forest System roads, motorized trails, and areas. **The result of these changes** will be a system of roads, trails, and areas designated for motor vehicle use **as required by the Travel Management Rule (USDA Forest Service 2005).**

### **Appeal Point 7: The Gila National Forest used money and staff for an unnecessary EIS. This expenditure was not authorized by Congress.**

The EIS was done solely to comply with the Rule, which was not an executive order or mandated by Congress. The Travel Management Rule is an invention of the USFS. The travel management planning process is not in the Forest Service budget. The USFS has not disclosed how it paid for this, or what mandated projects were not done because funds from taken from them to pay for travel management planning.

The Purpose and Need statement shows that all of the four purposes of the EIS were to comply with the Rule. The Travel Management EIS process is driven entirely by the Rule. There was no “need” for any of these items until the Travel Management Rule required it (bold added):

Summary p. iii

There is **a need to comply with the Travel Management Rule** by providing for a system of NFS roads, NFS trails, and areas on NFS lands that are designated for motor vehicle use by vehicle class, and if appropriate, by time of year (36 CFR 212.51(a)).

- There is a need to manage motorized vehicle use on NFS lands on the Gila National Forest **in accordance with the provisions of the Travel Management Rule** and 36 CFR parts 212, 251, and 261.
- There is a need to **comply with 36 CFR 261.13**, which requires that forests prohibit motor vehicle use off the system of designated roads, trails, and areas **(i.e., close the forest to motorized cross-country travel).**

- There is a need to **amend the forest plan to comply with the Travel Management Rule.**

**Appeal Point 8: The Travel Management Rule FEIS falsely claims no economic impact, nationally the impact far exceeds the E.O. 12866 limit**

The Rule, as published in the Federal Register, states that the Office of Management and Budget challenged the Rule being promulgated as a categorical exclusion because it exceeds the \$100 million limit on economic losses. The Gila National Forest EIS has not disclosed the true impacts to economic conditions in the affected counties. At Federal Register p. 68287, the Rule states:

In light of the substantial interest expressed in the proposed rule, **the Office of Management and Budget (OMB) has determined that the final rule is significant under E.O. 12866.** Accordingly, the Department has prepared a cost-benefit analysis for the final rule. This documentation is available in the rulemaking record.

**The Department disagrees that the final rule will have annual economic impacts of over \$100 million.** The final rule requires National Forests to designate which roads, trails, and areas are open to motor vehicle use. Once designation is complete, the rule will restrict motor vehicle use to designated roads, trails, and areas and prohibit motor vehicle use on those routes and in those areas that is inconsistent with the designations. Until designation is complete for a particular administrative unit or Ranger District, the rule will have no impact on motor vehicle use on NFS lands. **Even after designations are complete, the rule will have no direct economic impact because designations merely will regulate where and, if appropriate, when motor vehicle use will occur on NFS roads, on NFS trails, and in areas on NFS lands.**

The USFS claims that designation will “merely” regulate use now have proven to be false “Merely regulating” has happened nowhere. What has happened is that Forests are using the Rule to effect a massive shutdown of forest access. To claim this is “merely” coincidence is preposterous now.

The Socio-Economic report done for the GNF FEIS limited itself to an analysis of just motorized recreation. Even so, Table 11 at p. 20 identifies from \$1.53 to 2.88 million just in employment from motorized activities under the No Action Alternative. The report claims a linear relationship between miles and dollars. A decision closing half the roads

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would cut the income by half. That would be a \$1 million loss in just one forest, for one type of activity. Table 12 at p. 21 claims \$5.8 million for labor income from all recreation under Alternative B.

The NMOHVA comment on hunting economics showed that inclusion of visitor expenditures would have increased the economic impacts by orders of magnitude. The true economic losses include the loss of visitor spending that the Socio-Economic report refused to include. As NMOHVA showed in the hunting economics comment, and the economics appeal point, visitor spending is a standard indicator for assessing a tourist economy, used by other national forests and by the USFS research stations when they are analyzing economic impact. The national NVUM found that 3.9% of visitors come to national forests primarily for OHV use. Over the past few years, the record of road and trail closures being done under the banner of travel management; across the west shows that the closures are 50% and up. There is absolutely no doubt that the economic impacts far exceed the \$100 million limit. The Santa Fe National Forest closed over 70% of the roads and even more of the trails. That same pattern is playing out in the Gila National Forest and all over the west.

**The Office of Management and Budget was right, the economic losses are over \$100 million annually. Nationally, the losses are orders of magnitude over the limit.** The USFS might claim they didn't know the implementations would turn out like this. Of course it is hard to believe they know so little about their own operations that they couldn't predict that. But even so, now that the pattern is so consistent and so undeniable.

**Appeal Point 9: USFS has done nothing to modify the Rule, to reduce economic impacts.** USFS at the national level has done absolutely nothing to correct or relieve the economic impacts. As the implementation plans have been completed, the evidence has been accumulating about the economic impact of the closure decisions across the country. The USFS cannot claim ignorance. The USFS cannot claim they can't control the local decisions. The USFS imposed this national rule and it could change it. The USFS could have modified their Rule, to put in some minimum amount of routes left open, to limit how much could be closed, to limit economic impact. They have done nothing even though they now know what the economic results are. The only conclusion one can reach is that the USFS is doing nothing to stop this, because they don't want to. A huge reduction in public access is exactly what they want and what they intended to do all along. It is simply not believable to think that the USFS put out the Rule and didn't think, know or realize it would be used to impose a massive closure of public access.

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The economic impacts are undeniable, and enormous, just from impact to motorized recreation. And that's before considering other economic losses; non motorized recreation that is discouraged because reduced motorized access makes it harder to do other activities, or losses from reduced productivity of ranches and other commercial forest uses. The closure decisions have been coming in from around the western states. The Wallowa Whitman National Forest attempted to close over 50%; closing 4,000 miles and leaving 3,000 miles open, before Oregon senators forced the Regional Forester to withdraw the decision.

I have read the travel management EIS's for six forests in northern California, various EIS's and EA's in Colorado forests, and every EA and EIS for travel management in the Cibola, Carson, Santa Fe and Gila National Forests in New Mexico. They all conclude the travel management rule implementation will cause little or no economic impact from closures. It is obvious that this is blatantly false. But the USFS is compelled to make these claims of no economic impact to prop up their categorical exclusion Rule. To admit to more than \$100 million in economic losses would trigger the Benefit-Cost Analysis (BCA) required under Executive Orders 12866 and 12291. Any honest discussion of the economic losses would show the true impact of the Rule, and prove it should never have been put out as a categorical exclusion because it exceeds the limits for economic impact.

**Original Comment: Travel Management Rule is an Illegal Categorical Exclusion**

March 3, 2011

Forest Supervisor  
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**Dear Responsible Official,**

**Illegality of Using Categorical Exclusion for the Travel Management Rule**

**Error:** The Travel Management Rule (TMR) is in violation of CEQ because it does not qualify to be a Categorical Exclusion. By calling the TMR a Categorical Exclusion, the U.S. Forest Service allowed itself to avoid a nation-wide Environmental Impact Statement for the Rule. This allowed them to impose a Rule which imposes major changes and reversals in long established planning procedures, and do to so without the participation of the public and local governments.

**Discussion:**

The Travel Management Rule, as published on November 9, 2005 in the Federal Register, asserts that it is a Categorical Exclusion. The document as published includes 25 pages of Responses to Comments. The following Response is at page 23 (p 68286 of Vol. 70, No. 216). Underline added.

*Response. The Department has determined that this final rule falls within the category of actions excluded from documentation in an environmental assessment or environmental impact statement under FSH 1909.15, section 31.1b. This provision excludes from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions. No extraordinary circumstances enumerated in the Forest Service NEPA procedures exist that would preclude reliance on this categorical exclusion. The final rule would have no effect on users or on the environment until designation of roads, trails, and areas is complete for a particular administrative unit or Ranger District, with opportunity for public involvement. Specific decisions associated with designation of routes and areas at the local level may trigger the need for documentation of environmental analysis on a case-by case basis under NEPA.*



The description for a Categorical Exclusion is at FSH 1909.15, section 31.1b.

31.1 - General

*A proposed action may be categorically excluded from further analysis and documentation in an EIS or EA only if there are no extraordinary circumstances related to the proposed action and if:*

- (1) The proposed action is within one of the categories established by the Secretary at [7 CFR part 1b.3](#); or*
- (2) The proposed action is within a category listed in sections 220.6 (d) and (e). (36 CFR 220.6(a))*

The next part of FSH 1908.15, section 31.2, presents criteria only for 'Resource Conditions', such as flood plains, wilderness, designated habitat, endangered species, etc. These are all physical aspects of the environment. In its citation of FSH 1908.15 to defend its Categorical Exclusion, the agency avoids the intent of a categorical exclusion. Instead, it points only to a very particular and limited section which is applicable to limited local situations, not national level policy.

In asserting the claim of Categorical Exclusion, the agency relies on its own internal regulations, rather than a higher authority. There is a higher authority to be consulted, the CEQ. There is a more comprehensive answer from the CEQ, in the well-known 'Forty Questions'.

At Question 37b, the CEQ discusses whether or not a Proposed Action should be an EA or an EIS, either of which require a much higher standard of analysis than a Categorical Exclusion. (underline added)

37b. What are the criteria for deciding whether a FONSI should be made available for public review for 30 days before the agency's final determination whether to prepare an EIS?

- A. Public review is necessary, for example, (a) if the proposal is a borderline case, i.e., when there is a reasonable argument for preparation of an EIS; (b) if it is an unusual case, a new kind of action, or a precedent setting case such as a first intrusion of even a minor development into a pristine area; (c) when there is either scientific or public controversy over the proposal; or (d) when it involves a proposal which is or is closely similar to one which normally requires preparation of an EIS. Sections 1501 .4(e) (2), 1508.27.

The CEQ wording is 'scientific or public controversy'. The presence of public controversy alone is sufficient to require the higher standard of analysis, even if there is no scientific controversy. The CEQ also uses the word 'or' to indicate that only one of the factors need be present to require the higher standard of analysis. The Travel Management Rule triggers three of the four factors identified by CEQ. Under these criteria, an EIS would be required.

- borderline case, reasonable argument for preparation of an EIS
- unusual case, new kind of action (which also sets a precedent)
- public controversy over the proposal

I ask 'If the TMR wouldn't even qualify to be an EA instead of an EIS, how can the USFS justify making the TMR a Categorical Exclusion?' I contend it cannot be justified. The agency is using the lowest level of NEPA document, on a national scale, to force a flood of changes requiring full EIS's, the highest level planning processes. Those changes include amendments in forest plans and EIS's for travel management implementation.

The Final Rule as published in the Federal Register included the comment that an EIS should have been prepared. This shows the high level of controversy of the TMR. Additional comments covered in the 25 pages preceding the TMR itself demonstrate a high level of public controversy over many other aspects of the TMR. Even if the agency claims there is 'no effect' until implemented, it has not answered to the charge that there is a high level of public controversy over the TMR.

There is an additional flaw in the agency's reliance on FSH 1909.15 Chapter 30. FSH 1909.15 Chapter 30 falls far short of how CEQ discusses Categorical Exclusions. Here is what CEQ says about Categorical Exclusions: (bold and underline added)

#### **Sec. 1508.4 Categorical exclusion.**

"Categorical exclusion" means a category of actions which **do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations** (Sec. 1507.3) **and** for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in Sec. 1508.9 even though it is not required to do so. **Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.**

**I note that in order to qualify as a Categorical Exclusion an action must meet both CEQ tests.**

**It must not have significant effects on human environment AND must pass the requirements of the agency implementing the action. The TMR fails the first test.**

The USFS says the TMR qualifies to be a Categorical Exclusion because it does not create 'extraordinary circumstances' which create a 'significant environmental effect'. The agency reaches this conclusion by relying on FSH 1909.15 Chapter 30. This may be accurate, but that is only half of the CEQ requirement. FSH 1909.15 Chapter 30 ignores the issue raised by CEQ, of whether the action may have a significant effect on the human environment.

**The agency has avoided the larger issues covered in the CEQ's Forty Questions; unusualness, precedent-setting, and public controversy. It also avoided the issue of individual and cumulative effects on the human environment, as per Section 1508.4**

#### **Pre-implementation Effects of the Travel Management Rule**

Despite the agency's claims to the contrary, the TMR itself DOES cause significant environmental effects before it is implemented. The USFS claims the TMR has no effect in itself, because it is all done through 'local decisions'.

**The agency claims that there are no significant environmental effects from the TMR until designation projects are completed. There significant effects, because of how environmental decisions are being forced and limited to predetermined options. Even before implementation at the local level, the TMR has the significant effect of restricting the possible outcomes of the NEPA process. This has the effect of FORCING certain environmental effects.** NEPA forbids pre-determined outcomes; that violates CEQ regulations against pre-decision. This in itself is a major inconsistency and conflict that the agency has not addressed or resolved.

**The TMR created a nationwide order that puts four pre-determined decisions into effect everywhere.** These decisions DO affect the users and the environment before local decisions are complete, because the USFS is saying these all must be implemented. Forests are not allowed to make local planning decisions which do not include these mandates. These decisions are NOT presented as open for discussion or analysis in any local travel management EA or EIS and they have not been examined for legality under a national level EIS. These mandates are 'pre-decisional', and as such, are arguably in violation of CEQ.

## Appeal of the Record of Decision for Travel Management on the Gila National Forest

These are the four predetermined outcomes that the TMR says must be part of every decision in every national forest:

1. The TMR must be implemented everywhere and in the same way (regardless of local conditions, local decisions, local need for change, and public opposition)  
*Comment: The TMR is attempting to trump CEQ, and limit what can be decided in the local EIS or EA by imposing a predetermined decision over the entire process.*
2. The TMR says all forests must close cross country travel  
*Comment: This is contradictory to many existing Forest Plans. Implementing the TMR has forced the Forests to amend their Forest Plans. This is certainly a significant impact.*
3. The TMR says all routes that are not designated are closed and are illegal to use once the designation process is complete EVEN THOUGH the routes may not have been analyzed or even inventoried and mapped.

*Comment: The TMR is turning normal planning and decision-making procedures upside down. First it tells the forests they are not required to inventory and analyze all the routes in order to make its designation decisions. Then it says that non-designated routes are automatically closed. Taken together, this means forests can close routes without analyzing them, and this is contrary to NEPA. NEPA says all decisions with significant effects on the ground and on the human environment must be analyzed. **The USFS has written the TMR to give itself permission to close routes without inventory or analysis. This is contrary to NEPA and the agency's own regulations.***

4. The TMR is imposing a nation-wide policy of 'Closed unless Designated Open' on all routes, without having analyzed the impacts or considering that the closure may not be needed or justified everywhere.

*Comment: This new policy contradicts many existing forest plans. This in itself shows the TMR has a significant impact. We find it implausible for the agency to insist there is no significant impact when it has forced forests to make forest plan amendments in order to implement the TMR. The needs for forest plan amendments plans to close cross country travel were known as soon as the TMR was published, before any local NEPA decisions were made or implemented.*

TMR is discarding established planning procedures and planning results which have gone through full NEPA compliance. The USFS is using a Categorical Exclusion to force forests to force change Forest Plans done under a full EIS with 90 comment

periods mandated under NFMA. In other words, the USFS is using its least stringent document with the least requirements force revisions in its most stringent documents done with the most analysis and the most demanding requirements. I find nothing in definitions or descriptions of the Categorical Exclusion that permit it to be used this way.

**DEIS does not comply with The 1982 Planning Regulations** The following quotes are from the 1982 Planning Rule) I assert that the GNF's travel management DEIS does not comply with these directives, just to name a few: (bold added)

***Planning criteria:** Criteria designed to achieve the objective of maximizing net public benefits shall be included.*

***(d) Inventory data and information collection.** Each Forest Supervisor shall obtain and keep current inventory data appropriate for planning and managing the resources under his or her administrative jurisdiction.*

(d) makes it clear that the USFS is expected to use inventory data for making planning decisions. The TMR contradicts this; it allows and even specifically directs the forests to make decisions with no data because it tells forests to close routes that it does not have to inventory, field check or analyze.

***(e) Analysis of the management situation.** The analysis of the management situation is a determination of the ability of the planning area covered by the forest plan to supply goods and services in response to society's demands. The primary purpose of this analysis is to provide a basis for formulating a broad range of reasonable alternatives.*

(e) The TMR limits the range of alternatives by forcing certain closures. Closure of cross-country travel is being imposed nationwide, even as the USFS contends that the TMR will be implemented by making local decisions and has no effect until implemented

***(1) Alternatives shall be distributed between the minimum resource potential and the maximum resource potential** to reflect to the extent practicable the full range of major commodity and environmental resource uses and values that could be produced from the forest. Alternatives shall reflect a range of resource outputs and expenditure levels.*

(1) Under the TMR, the alternatives are constricted to a narrow range and none of them address the concept of maximizing resource potential for the benefit of the human environment. All reasonable alternatives, as required under CEQ, are not possible under the TMR.

**Under CEQ, the controversial, unusual and precedent-setting Travel Management Rule does not qualify to be a Categorical Exclusion. The Travel Management Rule has not been analyzed under NEPA and the public has not been allowed to participate in an open process of disclosure. The Travel Management Rule is illegal, and decisions made for the purpose of implementing it are also illegal.**

**TMR has economic impact exceeding the \$100 million limit for being ‘insignificant’.**

Back in 2005, the Office of Management and Budget determined that the rule had significant economic impact. The agency disagreed and claimed the TMR decisions would preserve access and even increase opportunities for motorized use. Since then, the results of TMR planning processes have become visible. Nationwide, the roads and trails open to the public for motorized use have been severely reduced. Rural towns that are dependent on forest-based activities will be hard hit by the closures. The rosy picture of designated roads and trails painted by the agency back in 2005 has never materialized. What HAS materialized ARE major losses of access. Contrary to the hopeful verbiage in the TMR, virtually no unauthorized routes get designated anywhere. There is also a disturbingly predictable pattern of decisions across the country; closures amount to approximately 50 %. No matter where, why or what, the closures are 50 % and more. California is the worst case, with Region 5 defending DEISs that violate the commitments the Regional office itself made to the State of California. The agency’s claim of insignificant economic impact was clearly false, and OMB was right the first time.

The GNF’s travel management decision will not be NEPA compliant because it will have been made under a rule which is not a legitimate categorical exclusion, which forces predetermined outcomes, limits the range of alternative, does not comply with the 1982 Planning Rule, and allows decisions without proper analysis and documentation.

Sincerely,

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